

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 16675 of 2006(I)

PETITIONER:

ANISHA.A.BASHIR, D/O.V.S.BASHIR,
AGED 26 YEARS,MANJU, OLAYIL, THEVALLY,
KOLLAM 691 009.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO THE GOVERNMENT, DEPARTMENT OF HEALTH
AND FAMILY WELFARE, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF MEDICAL EDUCATION,
DIRECTOR OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM.
3. THE COMMISSIONER OF ENTRANCE EXAMINATION
THIRUVANANTHAPURAM.
4. THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.
5. THE PRINCIPAL,
GOVERNMENT MEDICAL COLLEGE, CALICUT.
6. BINDU, LECTURER IN OPHTHALMOLOGY,
MEDICAL COLLEGE, CALICUT.

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ADDL. 7. KERALA GOVERNMENT MEDICAL OFFICERS ASSOCIATION
REPRESENTED BY ITS PRESIDENT DR.SUNNY P.ORATHIL,
KGMOA HEADQUARTERS, REDCROSS ROAD,
THIRUVANANTHAPURAM.

(ADDL.R7 IS IMPEADED AS PER ORDER DATED 10.4.2007 IN
I.A.NO.5384/2007)

BY ADV. SRI.R.RAMADAS
GOVERNMENT PLEADER SRI.T.HOOD
SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN
SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE MEMO ISSUED BY THE DMA, DATED 18-05-2006 TO THE PETITIONER.

EXT.P2: TRUE COPY OF THE ORDER DATED 19-06-2006 OF THE HEALTH AND FAMILY WELFARE (S) DEPARTMENT.

EXT.P3: TRUE COPY OF THE RELEVANT PAGE OF THE PROSEPCTUS FOR ALL INDIA ENTRANCE EXAMINATIONS (MD/MS/PG DIPLOMA AND MDS COURSES, 2006).

RESPONDENTS' EXHIBITS:

EXT.R2(a): A TRUE COPY OF THE LETTER DATED 26.5.2006.

EXT.R6(a): TRUE COPY OF THE PAGE CONTAINING THE RELEVANT CLAUSE OF THE PROSEPCTUS.

EXT.R6(b): TRUE COPY OF THE FEE RECEIPT NO.46338 AND FEE PAYMENT CERTIFICATE AND CLASS ADMISSION CHIT.

// TRUE COPY //

TKS

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C)No.16675 OF 2006

Dated 10th April, 2007

JUDGMENT

Koshy, J.

Petitioner filed this writ petition to quash Ext.P2 order issued by the Government wherein it is stated that the reverted seat to the State quota from All India quota shall be filled up as per the norms for the State quota. In other words, in the reverted seat also a reservation as applicable to the State quota will be applicable. From the year 1988, 25% of the total Post Graduate Medical Courses in the State were allocated for All India quota. The above percentage was increased to 50% in 2005. The Hon'ble Supreme Court directed that if those seats were not filled up due to absence of candidates, that also should be reverted to the State quota. In ***Amit Gupta v. Union of India*** ((2005) 12 SCC 613), it was held as follows:

"The States are permitted to fill up the seats reverted to them on account of seats of all India quota having fallen vacant on the selected candidates having not joined the courses."

Accordingly, this year 115 seats in the P.G Degree courses and 76 seats in P.G. Diploma courses were set apart for All India

quota and 40 P.G. Degree seats and 33 P.G. Diploma seats in the All India quota were reverted back to State quota. In the prospectus for admission to the P.G course, no specific norms were mentioned regarding the admission to reverted seats. Therefore, it is the contention of the petitioner that then those seats can be filled up only from merits. Various decisions of the Supreme Court like Mohan Bir Singh Chawla v. Punjab University ((1997) 2 SCC 171), Preeti Srivastava (Dr) v. State of M.P. ((1999) 7 SCC 120) etc. were cited to show that in the Post Graduate Courses reservation should be restricted. In Kerala State, in the State quota there is reservation to the service candidates. According to the Government Pleader, such a course is adopted for attracting more persons to the service in rural areas, teaching profession etc. Experienced service candidates while writing Entrance Examination with fresh graduates may not obtain the same high ranks. But, they also have to get the minimum marks and reservation to service candidates is also a policy matter. The direction of the Supreme Court is that 50% seats will be reverted to the State quota. When 50% seats are reverted to the State quota, automatically, the norms applicable to the admission to the students in the State quota will prevail. While filling up the reverted seats, the same norms for State

quota will have to be applicable and Government is bound to adopt that method. By Ext.P2 no specific change is made out. Such a course was not adopted by the Government earlier as number of seats reverted were very few. Now, number of reverted seats are many.

2. As a matter of fact, it is submitted by the Government Pleader that out of the reverted seats for P.G. Degree course, three seats were allotted to M.S. Ophthalmology. Out of the three seats, two were given to merit quota. Only one was given to in-service candidate on the basis of allotment of seats in State quota. On the facts also we see that no interference is required.

The writ petition is dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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